

1
2 UNITED STATES DISTRICT COURT

3 DISTRICT OF NEVADA

4 ANDY QUEZADA,

Case No.: 2:24-cv-02308-APG-DJA

5 Petitioner,

Order Dismissing Action

6 v.

7 RONALD OLIVER, *et al.*,8 Respondents.
9

10 This action was initiated *pro se* by Andy Quezada on December 12, 2024 as a petition for
11 a writ of habeas corpus. Quezada has not paid the \$5 filing fee and he has not applied to proceed
12 *in forma pauperis*. And his habeas petition (ECF No. 1-1) is not on a form recognized by this
13 court; rather, it is on a form apparently meant for filing in state court. *See* Local Rules LSR 1-1,
14 1-2, 3-1. I will dismiss this action, without prejudice, for these reasons.

15 If Quezada wishes to attempt to proceed with this action, he must submit a petition for
16 writ of habeas corpus on the correct federal-court form, and he must either pay the \$5 filing fee
17 or file an application to proceed *in forma pauperis* using the correct form. He must do so in a
18 new case. This means he should not include the case number of this case on those forms. I will
19 direct the Clerk's Office to send Quezada the necessary forms with this order.

20 I note that Quezada's petition indicates that he has not exhausted in state court any claim
21 related to the petition. *See* Petition, ECF No. 1-1 at 3, 10, 11. Therefore, even if filed correctly,
22 his petition likely would not present any viable claim. There is no indication that Quezada has
23 ever initiated a state-court action relative to his petition in this case. *Id.* "[A] state prisoner must

1 normally exhaust available state judicial remedies before a federal court will entertain his
2 petition for habeas corpus.” *Picard v. Connor*, 404 U.S. 270, 275 (1971) (citations omitted). The
3 exhaustion requirement gives state courts the initial opportunity to correct constitutional
4 violations. *See id.* To exhaust a claim, a petitioner must fairly present the claim to the highest
5 available state court and give that court the opportunity to address and resolve it. *Duncan v.*
6 *Henry*, 513 U.S. 364, 365 (1995) (citing *Picard*, 404 U.S. at 275); *Keeney v. Tamayo-Reyes*, 504
7 U.S. 1, 10 (1992). Given that Quezada drafted his petition using a state-court form, it is possible
8 that he meant to initiate a state-court action rather than this federal-court action. If that is the
9 case, Quezada should be sure to send his petition (on a state-court form) to the appropriate state
10 court, and not to this federal court.

11 **I THEREFORE ORDER** that this action is **DISMISSED** without prejudice.

12 **I FURTHER ORDER** that, as reasonable jurists would not find the rulings in this order
13 to be debatable, Quezada is denied a certificate of appealability.

14 **I FURTHER ORDER** the Clerk of the Court to:

15 - **ENTER JUDGMENT** dismissing this action without prejudice and

16 **CLOSE THIS CASE.**

17 - **DIRECT INFORMAL ELECTRONIC SERVICE** upon the

18 respondents under Rule 4 of the Rules Governing Section 2254 Cases by adding

19 Nevada Attorney General Aaron D. Ford as counsel for the respondents and

20 sending to his office a notice of electronic filing of the petition (ECF No. 1-1) and

21 this order.

22 - **SEND** Quezada a copy of his petition (ECF No. 1-1), a copy of the court’s

23 form Petition for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254 by a

1 Person in State Custody (Not Sentenced to Death) Packet, and a copy of the
2 court's form IFP Application to Proceed in Forma Pauperis (Inmate Packet).

3 Dated: December 18, 2024.

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6 ANDREW P. GORDON
7 CHIEF UNITED STATES DISTRICT JUDGE
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